HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 235/06 (S/S)

Satpal Singh Bhandari

vs

S.S.P. Dehradun

Approved for reporting

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Not approved for reporting

Date of decision 28-02-2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 235 of 2006 (S/S)

Satpal Singh Bhandari, S/o Sri Shurvir Singh Bhandari, R/o A-9 Agrasen Nagar, Haridwar Road, Rishikesh, Near Manav Chetna Kendra, Dehradun.

……. Petitioner.

Versus

1. Senior Superintendent of Police, Dehradun.
2. Deputy Inspector General of Police, Garhwal Region, Uttaranchal Dehradun.

….. Respondents.

Sri Sudhir Singh, learned counsel for the petitioner.
Learned Standing counsel for respondents.

HON'BLE RAJESH TANDON.J.

28.02.2006

Heard Sri Sudhir Singh, learned counsel for the petitioner and learned Standing counsel for the respondents. Both the parties have submitted that the petition may be disposed of at the admission stage.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 17-10-2005 passed by respondent no.1.

Briefly stated, the petitioner was selected in Uttaranchal Police Force for the post of constable and before his dismissal he was in a regular service. The grievance of the petitioner is that on 17-10-2005 the respondent no.1 has passed a non-speaking dismissal order against the

petitioner. According to the respondents the petitioner remained absent from V.I.P duty on 16-10-2005 and on that basis the order of dismissal has been passed. The petitioner has submitted that neither any inquiry was conducyed nor any charge was framed although the petitioner was a regular employee having being appointed in service by the respondents. The petitioner has filed a departmental appeal before the Deputy Inspector General of Police on 8-1-2006 and the same is still pending. The petitioner has also referred the judgment reported in **Honorary Capt. C.S. Sajwan Vs. Station Sub Area and others**- 2005 (2)U.D. 331 where it has been observed as under:

"10-The petitioner has been dismissed from his services on the ground of misconduct under the provisions of para-45 of SOP (Standard Operating Procedure). Para-47 of SOP is regarding procedure for dealing with the case of misconduct. Para-45 of SOP is reproduced as below:-

Procedure for dealing with case of misconduct:-

47- Before awarding to an employee any of the punishments mentioned in para-39 (e) & 45 the following procedure shall be followed by the disciplinary authority:-

(a) *The employee is to be served with a charge sheet, clearly stating the imputation of misconduct against him and calling upon him to show cause as to why one or more of the punishments, included in these guidelines should not be awarded to him.*

(b) The reply to the charge sheet, if any, is to be duly considered by the disciplinary authority.

(c) If the employee so desires, he is to be heard in person and is also to be allowed to cross examine witness(es) against him or produce witnesses in his defence. The disciplinary procedure will be as under:-

(1) Before the employee is dismissed or discharge from service following procedure shall be adopted in accordance with the principle of natural justice as applicable from case to case:-

(aa) Issuance of Charge-sheet,

(ab) Appointing of Inquiry officer,

(ac) Holding of any Inquiry,

(ad) Perusal of the report of Inquiry Officer by the Disciplinary Authority.

(ae) Issuance of show cause notice.

(af) Issuance of order of punishment.

(ii) In the event of the services of a legally qualified person being utilized by the management/establishment to present their case before the Inquiry Officer, the same opportunity must be offered/afforded to the delinquent employee. However, the employee can utilize the services of one of his colleagues to present his case before the Inquiry officer-

(iii) After considering the inquiry report, if misconduct is established the disciplinary authority shall proceed to take appropriate action. However, the disciplinary authority is not bound to accept the inquiry report but while awarding the punishment , the authority must states its reasons for not accepting the inquiry report.

11. The aforesaid provision clearly states that the employee is to be served with the charge-sheet stating therein imputations of misconduct against him. If employee, so desires, he is to be heard in person and is also to be allowed to cross examine

witness(es) again him or produced witness(es) in his defence. Para 47 (c) (i) provides that before the employee is dismissed or discharged, he will be served with the charge-sheet; Inquiry Officer will be appointed; there will be a full –fledged inquiry and after going through the report of inquiry officer, a show cause notice shall be issued. Only by adopting the procedure laid down in para 47 of the above provision, the punishment order can be passed by the Disciplinary Authority. The order of dismissal dated 14-7-2003 it self indicates that a court of inquiry (Preliminary Inquiry) was conducted on 1-4-2003 and keeping in view the findings of inquiry report, the petitioner was given opportunity of personal hearing on 7-7-2003 by the Disciplinary Authority and the order of dismissal has been passed on 14-7-2003 in the light of the findings of that inquiry. Since the charge-sheet was served upon the petitioner itself on 17-6-2003 leveling to charges against the petitioner therefore, the inquiry conducted on 1-4-2003 can not be treated as full-fledged departmental inquiry, which was undoubtedly a preliminary inquiry. Thus, it can not

be disputed that a departmental inquiry was not conducted in the present case. It is the settled principle of law that an employee can not be dismissed from services without holding departmental inquiry. The argument advanced by learned Standing Counsel that the petitioners was dismissed from service and after holding proper inquiry and after affording him adequate opportunity of hearing as well, is not, at all, sustainable."

In **Promod Kumar Upadhayay Vs. State of U.P. & others, 2005 (2) U.D., 365** it has been held that before awarding the major punishment of dismissal, removal or reduction in rank, inquiry report is required to be furnished to the delinquent official, as to whether he wants to submit any reply of the same and he should have been given the inquiry report as well. The short submission of the petitioner is that in view of the order passed against the petitioner he has not been afforded any opportunity to the dismissal order.

Since the alternative remedy and departmental appeal is already pending and, therefore, exercise of jurisdiction under Article 226 and 227 of the Constitution of India is not warranted in the present circumstances. However, since the

departmental appeal is already pending it will be open for the appellate court to examine the correctness of the dismissal order and further as to whether the dismissal order has been passed after affording the opportunity to the petitioner and further as to whether the procedure for awarding the punishment is valid or in accordance with U.P. Government Servants (Disciplinary Inquiry and Appeal) Rule, 1999.

Since the petitioner has already availed the remedy of appeal it will be open for the petitioner to argue all material points before the appellate authority and the appellate authority shall dispose of the appeal within a period of 6 weeks from the filing of the certified copy of the order. If the appeal is not decided within this period it will be open for the petitioner to apply for revocation of the dismissal order.

In view of aforesaid, the writ petition is disposed of. No order as to costs.

28.02.2006.

Negi.

(Rajesh Tandon. J)